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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,359	01/05/2004	Richard C. Wilmoth	03-0898.01	2197

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EXAMINER	
BOLES, DEREK	

ART UNIT	PAPER NUMBER
3749	

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/751,359	WILMOTH, RICHARD C.	
	Examiner	Art Unit	
	Derek S. Boles	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-3,5-7,10,11 and 14-16* is/are rejected.

7)☐ Claim(s) *4,8,9,12,13 and 17* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim(s) 1-3, 5-7, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gies et al. (5,355,910) in view of Klomhaus et al. (5,194,038). Gies et al. discloses all of the limitations of the claim(s) except for the relatively rigid layer operates to close the sealing flap irrespective of the pressure relief valve's orientation with respect to gravity. Klomhaus et al. discloses the presence of a relatively rigid layer operating to close the sealing flap irrespective of the pressure relief valve's orientation with respect to gravity. See fig. 1 of Gies et al. and abstract of Klomhaus et al. for the spring action of the flap. Hence, one skilled in the art would find it obvious to modify the system of Gies et al. to include the relatively rigid layer operating to close the sealing flap irrespective of the pressure relief valve's orientation with respect to gravity of Klomhaus et al. for the purpose of better flap performance in various situations. Regarding claim 2, see col. 3, lines 66-68 of Gies et al. Regarding claim 3, see element **30a** of Gies et al. Regarding claims 5-7, 14 and 15 see element **20** of Gies et al.

Claim(s) 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gies et al. in view of Klomhaus et al. and in further view of Barton (6,210,266). Gies et al. in view of Klomhaus et al. discloses all of the limitations of the claim(s) except for sealing the flap to the support by heat staking. Barton discloses the presence of sealing the flap to the support by heat

staking. See col. 4, line63 to col. 5, line 5. Hence, one skilled in the art would find it obvious to modify the system of Gies et al. in view of Klomhaus et al. to include sealing the flap to the support by heat staking of Barton for the purpose of ease of manufacture.

Claim(s) 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gies et al. in view of Klomhaus et al. and in further view of Oppermann et al. (6,609,535). Gies et al. in view of Klomhaus et al. discloses all of the limitations of the claim(s) except for the rigid layer being a comb. Oppermann et al. discloses the presence of a rigid layer being a comb. See fig. 4. Hence, one skilled in the art would find it obvious to modify the system of Gies et al. in view of Klomhaus et al. to include a rigid layer being a comb of Oppermann et al. for the purpose of a more complete seal.

Allowable Subject Matter

Claims 4, 8, 9, 12, 13 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

In response to applicant's argument that, were Gies et al and Klomhaus et al to be combined as proposed, the two rigid layers of Gies et al would have to be connected and a u-shaped connection portion, from Klomhaus et al would need to be placed above the portion where the living hinge area is in order to bias the flap toward the passageway. This is a substantial redesign of Gies et al. Furthermore, since Gies et al requires the valve to have a gap between the rigid layers, combining Gies et al with Klomhaus et al would necessarily change the operating principles of the Gies et al flap valve. Therefore, there is no motivation to combine the

references. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The provided references are representative of the state of the art that is applicable to the applicant's invention. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derek S. Boles at (571) 272-4872.

D.S.B.

DEREK S. BOLES
PRIMARY EXAMINER
GROUP 3700

1/4/06